

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

ZACHARY WHITE,

Plaintiff,

v.

AMBLING MANAGEMENT COMPANY,
LLC, and HIGHLANDS ATLANTA MF II,
LLC

Defendant.

JURY TRIAL DEMANDED

AMENDED COMPLAINT

COMES NOW Zachary White, Plaintiff, and makes and files this complaint against Ambling Management Company, LLC and Highlands Atlanta MF II, LLC as follows:

PARTIES AND JURISDICTION

1.

Plaintiff, Zachary White, is a resident of the State of Georgia.

2.

Ambling Management Company, LLC is a domestic limited liability company existing under the laws of the State of Georgia, with its principal place of business in Valdosta, GA. Ambling Management Company, LLC may be served through its registered agent, Michael H. Godwin, at 348 Enterprise Drive, Valdosta, GA 31601 and is subject to the jurisdiction of this court. Highlands Atlanta MF II, LLC is a foreign limited liability company existing under the laws of the State of Georgia, with its principal place of business in Atlanta, GA. Highlands Atlanta MF II, LLC may be served through its registered agent, National Registered Agents, Inc., at 289 S. Culver Street, Lawrenceville GA, 30046.

3.

Jurisdiction and venue are proper in this court.

FACTUAL ALLEGATIONS

4.

Defendant Highlands Atlanta MF II, owned and operated The Highlands of East Atlanta located at 2051 Flat Shoals Rd SE, Atlanta, GA 30316. Defendant, Ambling Management Company, LLC, managed The Highlands at East Atlanta on August 25th, 2022.

5.

On or around August 25th, 2022, Plaintiff was an invitee at The Highlands at East Atlanta.

6.

On that date at around 10:30 pm, Plaintiff, an invitee, was coming home to his residence. On his way up the stairs to enter his apartment, at least two men, coming around the corner, accosted Plaintiff. One of the individuals shot the Plaintiff. The Plaintiff suffered from a gunshot wound to his right thigh. At the time of the assault, Plaintiff was unarmed and was located at the door of his apartment. Plaintiff was rushed to Grady Hospital by Basic 51 American Medical Response for surgery. A police report was also generated Dekalb County Police Department, case number: 22-071377.

7.

As a result of the violent assault, Plaintiff suffered significant blood loss, gunshot wound to his right femur resulting in a right ballistic subtrochanteric femur fracture. Plaintiff underwent immediate surgery involving an intramedullary nailing procedure to his right femur. After his

procedure, Plaintiff had a minor stroke due to weakness. Current special damages are in excess of \$200,000, and that number is expected to increase as Plaintiff continues treatment, therapy, and pain management.

8.

The Highlands at East Atlanta is in a high crime area. In the three years prior to August 25th, 2022, there had been several armed robberies, aggravated assaults, and burglaries. Several tenants placed The Highlands of East Atlanta on notice of these violent criminal acts by either notifying the leasing office or Emergency Maintenance. On June 5, 2020, a similar incident occurred at the Highlands at East Atlanta, where an individual was also shot on the property by an unknown individual. (See insert below)

On 06/05/2020 at approximately 1630 hours I responded to 2051 Flat Shoals Rd in reference to a Person Shot Call.

Upon my arrival I responded to building A in reference to the comments of the call stating the victim (Aaron Harcum) was at the location. Mr. Harcum was not at the location he was later found in the area of Flat Shoals Rd and Keystone Dr by Officer M.A. Williams (3506) with a gunshot wound to the back. Mr. Harcum advised he was at the rear of building G visiting his girlfriend and advised an unknown black male came from the side of the building with a mask on and shot him in the back. Mr. Harcum advised when he was shot he ran away from the location and did not know who shot him. Mr. Harcum stated he didn't know which apartment his girlfriend lives in that's why he was at the rear of the location. Mr. Harcum was transported to Grady by Med45.

I located a crime scene with approximately 7 shell casings at the rear of building G. There were no witnesses at the scene of the crime and the suspect fled the scene. Detective Hoyt (934) was notified of the incident and responded to the location to investigate. A case number was assigned to the incident and body worn was activated.

Another shooting incident occurred a year later on June 5, 2021, where there was gunfire at the apartment complex and a resident was injured inside her home. (See insert below)

On June 5, 2021 at approximately 0850 hours I responded to 2051 Flat Shoals Road (Highland at East Atlanta) in reference to a property damage call.

Upon my arrival, I met with Gerion Davis (complainant). Ms. Davis advised yesterday a window in her 2-bedroom apartment was damaged due to a bullet projectile. Ms. Davis stated she was not at the location when the incident occurred, however her daughter [REDACTED] and her brother, Eric Smith were home. Ms. B. Davis and Mr. Smith were not present upon my arrival. Ms. G. Davis stated Ms. B. Davis informed her that she was sleep in her bed near the window when the sound of glass shattering woke her up. Ms. G. Davis stated Mr. Smith was in the bedroom next to Ms. B. Davis' room when the incident occurred.

While on scene, I observed a small hole near the right side of Ms. B. Davis' bedroom window. I also observed that the bedroom closet and a wall in the hall had damage due to the projectile. Ms. G. Davis advised she was informed by Mr. Smith that he was unable to identify the suspects involved. Ms. G. Davis advised that Ms. B. Davis incurred a small cut to her right hand due to the broken glass. Ms. G. Davis advised that EMS was not requested to the location. The projectile was recovered from the scene and lodged into the property room. No injuries were reported at the scene.

Homicide/Assault Detective Hoyt #934 was notified in reference to this incident. Officer body camera was on.

Same or similar crimes have occurred and are occurring since the filing of this lawsuit. Ambling Management Company, LLC, Highlands Atlanta MF II, LLC and The Highlands at East Atlanta are on notice of the same and/or similar crimes alleged in this complaint.

COUNT 1
PREMISES LIABILITY

9.

Plaintiff realleges and incorporates herein the allegations contained in paragraphs 1 through 8 above as if fully restated.

10.

Plaintiff now shows that, under the laws of the State of Georgia, Defendants Ambling Management Company, LLC and Highlands Atlanta MF, LLC possessed a legal duty to act reasonably and to refrain from unreasonable acts or omissions in order to keep the premises where Plaintiff lived safe; and to act reasonably to provide for the general security of the premises.

11.

Plaintiff also shows that, in fact, Defendants was negligent in failing to take adequate measures to protect invitees on their premises from assaults by its tenants and third parties. Defendants failed to take reasonable precautions, including, but not limited to the following: (1) installation of security cameras and/or the maintenance, repair, and general upkeep of security cameras to provide for the general security of the premises, (2) performing criminal background checks on prospective tenants, (3) reporting violent criminal activity occurring on the premises to all tenants leasing an apartment at The Highlands at East Atlanta, thereby alerting them to a dangerous condition from which they should protect themselves, (4) and failing to take reasonable

steps to prevent foreseeably violent crimes after other tenants placed The Highlands at East Atlanta on notice that these crimes were taking place regularly on the common areas of the premises.

12.

Plaintiff shows that Defendants knew or should have known, based on actual notice provided by other tenants who observed substantially similar violent activity on the premises, that Defendants' failure to take reasonable steps to keep the premises, where Plaintiff resided, safe, and to provide for the general security of the premises, would foreseeably result in continued violent criminal conduct on the part of third-party criminal actors which seriously injured Plaintiff.

13.

Plaintiff further shows that the aforementioned breaches of duty by Defendants, which encouraged, if not created, a general atmosphere of chaos and lawlessness that emboldened third party criminals, allowing them regular access to the premises near Plaintiff's apartment despite their ongoing criminal conduct, were the proximate causes of Plaintiff's injuries.

14.

Plaintiff also shows that, to the extent that Defendants knew or should have known that their failure to take reasonable steps to maintain the safety of the premises where Plaintiff resided, and to provide for the general security of The Highlands of East Atlanta. Defendants had a duty to initiate remedial measures and to notify their invitees and/or others similarly situated of their failures therein such that Plaintiff could be put on notice to take reasonable precautions to promote his personal safety.

15.

As a result of Defendants' conduct, Plaintiff has incurred past medical expenses and will continue to incur medical expenses in the future. As of today, plaintiff has incurred \$201,436.00 in medical specials.

16.

As a result of Defendants' conduct, Plaintiff has incurred past and future lost wages.

17.

As a result of Defendants' conduct, Plaintiff has incurred mental and physical pain and suffering and will continue to experience pain and suffering in the future.

COUNT 2
NUISANCE

18.

Plaintiff realleges and incorporates herein the allegations contained in paragraphs 1 through 17 above as if fully restated.

19.

Plaintiff shows that Defendant Ambling Management Company, LLC and Defendant Highlands Atlanta MF, LLC, created or maintained a continuous or regularly repeated act or condition on the property by allowing third parties to regularly and continuously engage in criminal activity, *including violent criminal activity*, on the common areas of the premises.

20.

Plaintiff shows that the abovementioned acts of crime, including violent crime, were continuously or regularly repeated on the premises, causing hurt, inconvenience, or damage to Plaintiff.

21.

Plaintiff shows that the inconvenience complained of by Plaintiff created a nuisance that would affect an ordinary, reasonable man, and in fact, did inconvenience and pose a serious threat to all tenants living at The Highlands at East Atlanta, and thereby had a demonstrable adverse impact on community residences that resulted in neighborhood blight.

22.

Plaintiff also shows that said nuisance caused Plaintiff's injuries.

COUNT 3
NEGLIGENCE PER SE

23.

Plaintiff realleges and incorporates herein the allegations contained in paragraphs 1 through 22 above as if fully restated.

24.

The negligence of Defendant Ambling Management Company, LLC and Defendant Highlands Atlanta MF, LLC is a failure to exercise the standard of care imposed by statute, and is negligence *per se*, that is negligence as a matter of law, as well as negligence as a matter of fact. Defendants did violate Chapter 18 of the Dekalb County, Georgia, Code of Ordinances by: (1) breaching their duty to construct and maintain The Highlands at East Atlanta in conformance with applicable codes in force within the jurisdiction, "or such ordinances which regulate and prohibit activities on property and which declare it to be a public nuisance to construct or maintain any dwelling, building, structure, or property in violation of such codes or ordinances"; (2) failing to protect the health, welfare, and safety of the citizens of Dekalb County by removal of both criminal

perpetrators and the housing blight in the community; and (3) failing to comply with building, safety, and fire codes to minimize the occurrence of illegal criminal activity on the premises.

25.

Defendants' negligence *per se* was the proximate causes of Plaintiff's injuries.

26.

Plaintiff, as an invitee living at The Highlands at East Atlanta, belonged to the class of people Chapter 18 of the Dekalb County, Georgia, Code of Ordinances was intended to protect, and the injuries Plaintiff sustained were the type of injuries Chapter 18 of the Dekalb County, Georgia, Code of Ordinances was intended to prevent.

COUNT 4
VICARIOUS LIABILITY

27.

Plaintiff realleges and incorporates herein the allegations contained in paragraphs 1 through 26 above as if fully restated.

28.

All employees at The Highlands at East Atlanta, who were placed on notice by tenants of prior incidents of violence and criminal activity occurring on the premises, including Emergency Maintenance employees, were agents of Defendant Ambling Management Company, LLC and Defendant Highlands Atlanta MF, LLC, acting within the scope of their employment at all times relevant to this litigation.

29.

Defendant Ambling Management Company, LLC and Defendant Highlands Atlanta MF, LLC are responsible for the conduct and actions of the individuals employed by or agents of The

Highlands at East Atlanta pursuant to the doctrine of *respondeat superior*, agency or apparent agency.

30.

Defendant Highlands Atlanta MF, LLC, as owner of The Highlands at East Atlanta, had a non-delegable duty under O.C.G.A. § 51-3-1 to exercise ordinary care in keeping the premises and approaches safe.

31.

Defendant Ambling Management Company, LLC and Defendant Highlands Atlanta MF, LLC is responsible for the acts and omissions of its agent and representative, under the theory of vicarious liability.

COUNT 5
PUNITIVE DAMAGES

32.

Plaintiff realleges and incorporates herein the allegations contained in paragraphs 1 through 31 above as if fully restated.

33.

The actions and conduct of Defendant Ambling Management Company, LLC and Defendant Highlands Atlanta MF, LLC as alleged hereinabove, were willful and wanton, evincing an entire want of care which would raise the presumption of a conscious indifference of the consequences to the members of the general public and to Plaintiff in particular, who would reasonably be expected to be affected by the actions and conduct of Defendant.

34.

By reason of the foregoing, Plaintiff is entitled to recover punitive damages from Defendant Ambling Management Company, LLC and Defendant Highlands Atlanta MF, LLC in such an amount as may be shown by the evidence and determined in the enlightened conscience of the jury in order to punish said Defendants for their past misconduct and to deter said Defendants from engaging in similar misconduct in the future.

WHEREFORE, Plaintiff prays that he has a trial on all issues and judgment against Defendants as follows:


- (a) That Summons issue for Plaintiff's claims against the Defendant;
- (b) That Defendants be served with a copy of this action;
- (c) That Plaintiff recover the full value of past and future medical expenses and past and future lost wages in an amount to be proven at trial;
- (d) That Plaintiff recover for mental and physical pain and suffering and emotional distress in an amount to be determined by the enlightened conscience of the jury;
- (e) That Defendants be ordered to pay Plaintiff's legal fees, costs, and expenses;
- (f) That Plaintiff recover such other and further relief as is just and proper;
- (g) That all issues be tried before a jury.


This 8 day of February, 2023.

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